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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER SAIDHA, TEKCHAND	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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3 3 UNITED STATES PATENT AND TRADEMARK OFFICE  
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8 8 BEFORE THE BOARD OF PATENT APPEALS  
9 9 AND INTERFERENCES  
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12 12 Appeal 2008-1720  
13 13 Applications 09/664,326  
14 14 Technology Center 1600  
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17 17  
18 18 Oral Hearing Held: June 12, 2008  
19 19  
20 20

21 21 Before TONI R. SCHEINER, MELANIE L. McCOLLUM, and  
22 22 DEMETRA J. MILLS, *Administrative Patent Judges*.  
23 23

24 24 ON BEHALF OF THE APPELLANT:  
25 25  
26 26

27 27 CARLOS M. TELLEZ, PH.D., ESQ.  
28 28 Finnegan Henderson Farabow Garrett & Dunner, LLP  
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30 30 Washington, D.C. 20001-4413  
31 31

32 32 The above-entitled matter came on for hearing on Thursday, June 12,  
33 33 292008, commencing at 9:25 a.m., at the U.S. Patent and Trademark Office,  
34 34 30600 Dulany Street, 9th Floor, Hearing Room A, Alexandria, Virginia, before  
35 35 Kevin Carr.  
36 36

37 37 P R O C E E D I N G S  
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40 40 THE USHER: Calendar Number 17, Mr. Tellez.  
41 41  
42 42

43 43 JUDGE SCHEINER: Thank you. Good morning.  
44 44

6 MR. TELLEZ: Good morning.

7 JUDGE SCHEINER: Take whatever time you need to get set up and  
8 then you'll have 20 minutes to present your argument.

9 MR. TELLEZ: I'm ready whenever you are.

10 JUDGE SCHEINER: I think we're ready, too.

11 MR. TELLEZ: Okay. My name is Carlos Tellez. I am here on behalf  
12 of Sanofi Aventis. And, as you know, the only issue here is a written  
13 description rejection. The independent claim is directed to a method or a  
14 process selecting a signal peptide for secretory expression in *e.coli* and the  
15 limitation. And the limitation at issue here is wherein the *e.coli* bacteria are  
16 not *e. coli* secretor mutants.

17 We believe there is proper description for that limitation, because the  
18 specification expressly indicates that experiments with both types of strains,  
19 no secretor and secretor mutants were performed and that were just coming  
20 out the matter directed to the secretor mutants in a classic In re Johnson  
21 provision.

22 I can direct you to the section of the specification. It's page 9, lines 1  
23 through 6, that describes the experiments where both *e. coli* strain Mc 1061  
24 or the secretor mutant WCM100 were transformed with the ligation mixture  
25 and grown. Under suitable conditions that experiment clearly demonstrated  
that both types of strain secretor and non-secretor mutants were used. We're  
now carving out the subject matter of the secretor mutants.

26 JUDGE SCHEINER: So is it fair to say that your position is that  
27 you're excluding something that was specifically enumerated?

28 MR. TELLEZ: Correct.

10

11 JUDGE SCHEINER: Was there an issue about the scope, whether or  
12not you had basis to exclude the generic category of secretor mutants?

13 MR. TELLEZ: Well, I don't believe the examiner raised that issue,  
14but if you're asking me, I believe that all of the secretor mutants will behave  
15in a similar manner. So WCM100 will be a representative secretor mutant.  
16And, in fact, I think both types of e. coli cells secreted on most secretor  
17mutants will behave in the same manner in this experiment.

18 I don't think there are any differences between how a secretor mutant  
19or a non-secretor mutant will perform with respect to the method that is  
20being claimed.

21 JUDGE SCHEINER: I think this may be the shortest oral hearing on  
22record. Unless you have something further, I think you've covered  
23everything.

24 MR. TELLEZ: Yes, I mean, that's basically our argument.

25 JUDGE SCHEINER: Okay.

26 MR. TELLEZ: Unless you have further questions?

27 JUDGE SCHEINER: Do you have anything?

28 JUDGE MCCOLLUM: I don't think I do.

29 JUDGE MILLS: No questions.

30 JUDGE SCHEINER: I don't have anything further.

31 MR. TELLEZ: Okay, well, thank you very much. I appreciate your  
32time.

33 JUDGE SCHEINER: I mean you have more time if you care to use it,  
34but I think you've covered everything.

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16 MR. TELLEZ: I think so, too.

17 JUDGE SCHEINER: Okay. Thank you for coming in.

18 MR. TELLEZ: Thank you.

19 [Whereupon, at 9:31 a.m., the hearing was concluded.]

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